IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 119 of 2005
In
COMPANY PETITION No. 338 of 1999
With
COMPANY PETITION No. 338 of 1999
With
COMPANY PETITION No. 15 of 1999
With
COMPANY PETITION No. 6 of 1999
With
COMPANY PETITION No. 222 of 2000
With
COMPANY PETITION No. 37 of 1998
With
COMPANY PETITION No. 249 of 2000
With
COMPANY APPLICATION No. 55 of 1998
In
COMPANY PETITION No. 37 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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MANOJ P. VYAS & 1 - Applicant(s)
Versus
MEHTA & ASSOCIATES FIRE PROTECTION SYSTEMS PVT.LTD. & 2 - Respondent(s)

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Appearance :
MRS YOGINI V PARIKH for Applicants.
MR BP GUPTA for Respondent No(s).: 1.
MR PRABHAV A MEHTA for Respondent No(s).: 2.
MR MIHIR J THAKORE, SENIOR ADVOCATE FOR SINGHI & CO for Respondent No(s).: 3.

MRS Swati Soparkar for respondent Company.

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CORAM :	**HON'BLE MR.JUSTICE K.A.PUJ**

Date : 03/08/2005

COMMON ORAL JUDGMENT

1. Several winding up petitions were filed against the respondent Company, namely, Maradia Chemicals Limited. They were pending before this Court for the last more than five to six years. During the pendency of these petitions, several proceedings have been initiated against the Company and possession of the assets of the Company more particularly Surendranagar and Vatva Units were taken over by ICICI Bank Limited by invoking the provisions of

Securitisation Act and by filing Civil Suit before the Bombay High Court.

2. Company Application No. 119 of 2005 is filed by the Workers of the respondent Company praying for their impleadment in the winding up petition being Company Petition No. 338 of 1999 and also further praying for passing winding up order against the respondent Company. While entertaining this application, this Court vide its order dated 08.04.2005 directed the office to place all the winding up petitions filed against the respondent Company which are pending before this Court along with the said application. Thereafter, by an order dated 19.04.2005, this Court has directed the applicants to join ICICI Bank Ltd. as party – respondent No. 3. Thereafter, vide order dated 06.05.2005, all the winding up petitions filed against the respondent Company were admitted and the Official Liquidator attached to this Court was appointed as the Provisional Liquidator of

the respondent Company and he was directed to issue advertisement of the admission of the petition being Company Petition No. 37 of 1998 in “Indian Express” & “Loksatta-Jansatta” - Both of Ahmedabad Editions making it returnable on 29.06.2005. Publication of advertisement in the Official Gazette was dispensed with. The Official Liquidator was directed to ascertain with regard to the assets of the Company and take the possession thereof subject to the order passed by Bombay High Court or any other authority in this regard.

3. Being aggrieved by the direction issued by this Court to the Official Liquidator with regard to possession of the assets o the Company, ICICI Bank Ltd. has filed Misc. Civil Application No. 48 of 2005 seeking review/recall of the order dated 06.05.2005 passed in Company Application No. 119 of 2005 by directing/clarifying that the Official Liquidator may not interfere with or disturb in any manner whatsoever the possession,

sale and/or the steps taken by the said Bank and/or the Receiver attached to the Bombay High Court and that the Official Liquidator may not take possession of the Vatva Unit and Surendranagar Unit of the respondent Company. The said application was disposed of by this Court by an order dated 13.05.2005 whereby this Court has observed that looking to the provisions contained in the Securitisation Act, the possession taken by the said Bank being the Secured Creditor, under the Securitisation Act, should not be disturbed at this stage. However, the said Bank should file before this Court the inventory of the assets of Vatva Unit of the Company, the possession of which was taken by it under the Securitisation Act. So far as Surendranagar Unit is concerned, the Receiver appointed by the Bombay High Court was having Inventory Report of Surendranagar Unit. The Court has, therefore, directed the Official Liquidator to collect the inventory of the properties which are in possession of the

Receiver appointed by the Bombay High Court either from the said Bank or from the Receiver and till further order is passed in Company Petition No. 338 of 1999 and others, the possession of the Vatva Unit taken by the said Bank under the Securitisation Act and the possession of the Surendranagar Unit taken by the Receiver appointed by the Bombay High Court should not be disturbed. The applicant Bank was, however, directed to place on record of this Court any development with regard to sale of properties of these two Units and/or realisation, if any.

4. All these matters have come up for hearing again on 29.06.2005. On that day, the Court has further directed the Official Liquidator to issue advertisement as the earlier order was not complied with by him and once again he was directed to comply with the order dated 06.05.2005. The Official Liquidator has thereafter filed his report on 19.07.2005 and

along with the said report, he has attached relevant clippings of the advertisements which were issued and also placed on record the Inventory report of Vatva Unit.

5. Today, when the matter is called out, affidavit on behalf of ICICI Bank is filed and along with the said affidavit, Inventory Report prepared by the Court Receiver appointed by the Bombay High Court is placed on record. It is stated in the said affidavit that the Bank in its capacity as Debenture Trustee filed Civil Suit No. 434 of 2003 before the High Court of Bombay for recovery of Rs.66,16,73,781/- as being due to the Debenture Holders under the said Debenture Trust Deed. The Bombay High Court vide order dated 13.08.2004 appointed the Court Receiver for the properties of the respondent No. 3 Company and on 02.03.2005, the Court Receiver has taken over the possession of the factory and assets of the Surendranagar Unit of the Company. The Bank has incurred necessary expenses for

safeguarding the properties of the Company. The possession of the assets of the Vatva Unit was taken under the Securitisation Act. The Bank being the Secured Creditor choose to remain outside the purview of winding up and opted to realize the security namely Vatva Unit and Surendranagar Unit charged and mortgaged to the said Bank on its own.

6. Heard Mrs. Yogini Parikh, learned advocate appearing for the applicant in Company Application No. 119 of 2005, Mrs. Swati Soparkar, learned advocate appearing for the respondent Company in Company Petition No. 37 of 1998 and Mr. Mihir Thakore, learned Senior Counsel appearing for Singhi & Company for ICICI Bank Limited. No one appeared on behalf of other Petitioning Creditors.

7. After having heard learned advocates appearing for the respective parties and after having perused the records produced before the Court

and since there was no objection for winding up order against the respondent Company even either from ICICI Bank Ltd., the respondent Company and Workers, the Court hereby inclines to pass such order. It is also necessary to observe that the Company is closed since long and assets of the Company were taken over by the Secured Creditors either under the Securitisation Act or pursuant to the order passed by the Bombay High Court and the properties of the Company are attached by the Court Receiver. The Company is, therefore, not in a position to carry out any business activities. Its liabilities are far in excess of the assets of the Company. The workers' liability are also not being discharged and there are many other Secured and Unsecured Creditors. The financial substratum of the Company has gone down and respondent Company is not in a position to discharge its liability. The Court, therefore, passes the final order of winding up against the respondent Company. The Official Liquidator who was appointed as the

Provisional Liquidator will now work as the Liquidator of the respondent Company. He is directed to take possession of all the assets and properties of the Company other than Vatva & Surendranagar Units. He is further directed to take fresh inventory and valuation of the assets – movable as well as immovable and all other goods and materials lying in these two places and compare with the Inventory reports which are produced on record. While taking fresh Inventory Report and Valuation, the two Inventory Reports which are already furnished should also be taken into account and if there is any discrepancy, the same should specifically be brought to the notice of this Court. The Official Liquidator is also directed to inform the Ex-Directors of the Company to file statement of affairs and is further directed to invite the Claims of the Creditors and the Workers. By virtue of this order, the Official Liquidator is directed to exercise all the powers which are conferred on him under the

provisions of Companies Act, 1956. Since the Security has already been deployed by ICICI so far as Vatva & Surendranagar Units are concerned, there is no need to deploy any Security Agency at this stage. However, only with a view to protect the interest of the workers and the Secured Creditors, he is directed to keep watch over the assets of the Company at these two Units.

8. With these directions, all winding up petitions as well as application are accordingly disposed of without any order as to costs.

[K.A. PUJ, J.]

Savariya